



INTEREST AND PENALTY PAYMENTS

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This publication is designed to answer many of the questions asked about interest and penalty payments that apply to sales and use taxes. Examples of situations where those payments apply are given, along with explanations of how they are calculated. Information is also provided on situations where interest and penalty payments can be waived. Only the more common circumstances are discussed in this booklet. If you need additional information, please call our Information Center at 1-800-400-7115.

Although the emphasis is on sales and use taxes, the information provided in this pamphlet generally applies to other tax programs administered by the Board, such as hazardous waste taxes, fuel taxes, and cigarette and alcoholic beverage taxes. However, there may be minor differences. If you have questions regarding these other programs, please contact the appropriate department (see "Special Taxes," page 10).

Examples of Situations That Can Result in Interest and Penalty Charges

The reasons for interest and penalty charges vary. For example, you may be assessed penalty and interest charges if you

- File a late return and/or payment
- Do not include a payment with your return
- Do not include sufficient payment for a tax liability
- Do not report tax on a taxable transaction
- Calculate tax at the incorrect rate
- Do not file a return
- Misuse a resale certificate or make sales without a valid permit

These and other examples are discussed in more detail on the following pages.

How Interest and Penalty Charges Are Calculated

Interest. Interest is calculated on a per-month basis. That is, one month's interest is charged for each month or fraction of a month that a payment is late. For example, if a payment is three days late, a full month's interest is due. Or, if a payment is one month and three days late, two month's interest is due.

The current interest rate for overdue taxes is 11 percent per year but is subject to change. See page 9 for more information on how the interest rate is determined. As explained on page 7, interest charges can be waived under limited circumstances.

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Penalties. As explained in the following pages, the percentage amount depends on the type of penalty and whether more than one penalty applies. The total amount of penalties that can be charged ranges from 6 to 60 percent of the tax amount due.

When Do Interest and Penalty Charges Apply?

Late tax payments are subject to penalty charges.

❖ **Late Tax Return Filings and Late Payments**

Note: The following information does not apply to late prepayments (see page 3).

Penalty charges. You are subject to

- A 10 percent penalty if you do not file your tax return by its due date
- A 10 percent penalty if your tax payment is late

(See next column for an explanation of a late filing or payment.)

If you file a late return *and* make a late payment, your penalty will not exceed 10 percent of the amount of tax due for the reporting period.

Example. You have a tax liability of \$1,000 for the reporting period and file a late return *and* make a late tax payment. As noted above, a 10 percent penalty applies to each infraction. However, the total penalty amount due is limited to \$100 (10 percent of your total tax liability).

Interest charges. If your payment is late, you will owe interest charges in addition to penalty charges. Interest is due for each month or fraction of a month the tax payment is overdue.

If you are filing a late payment and return, you can determine and report the amount of interest due by using the interest rate shown at the bottom of your sales and use tax return (it will show a monthly rate that is based on the annual rate). If you file a late payment and have not reported the interest due, the Board will determine the amount and send you a billing notice.

Example: Your tax liability is \$1,000 and payment is due on or before April 30. However, you do not make your tax payment until May 20, and the adjusted interest rate shown at the bottom of your tax return is .00917 ($11\% \div 12$). To calculate interest, you would multiply \$1,000 x .00917 to arrive at the amount to be paid, which is \$9.17.

If you did not submit your tax return until June 3, you would owe twice the amount of interest, or \$18.34. The reason for this is that one month's interest is due for each month or fraction of a month that the payment is late. So, since the payment was delayed until June 3, you would owe one month's interest for May plus one month's interest for the fraction of the month in June. Interest is not compounded.

What Is a Late Filing or Payment?

Mailed returns or payments. To be timely, mailed tax returns and payments must be postmarked on or before the due date shown on the return. If the due date falls on a Saturday, Sunday, or legal holiday, returns postmarked by the next business day are considered timely.

Note: If you use a commercial delivery service rather than the US Postal Service, you will need to retain proof of the dates the items were sent.

Credit card payments. If you charge your sales and use tax payment, you must call no later than the due date for the reporting period, and your call must be completed prior to 12:00 midnight Pacific Time on that date to be considered timely.

Electronic funds transfer (EFT) payments. If you are registered to pay your sales and use taxes by EFT, your payment must settle into the Board of Equalization's bank account by the first banking day following the tax due date. For more information, see the appropriate EFT publication for your payment option (publication 80-A, *ACH Credit Information*, or publication 80-B, *ACH Debit Information*).

❖ Late Tax Prepayments

This section applies to businesses that pay sales and use taxes on a "prepayment" basis (businesses with average monthly taxable sales of \$17,000 or more).

This section does not apply to brokers, distributors, and others who collect pre-paid sales tax on distributions of fuel (you should refer to the prepayment return form, BOE-401-DB series, for information on interest and penalties).

Interest charges may or may not apply to late prepayments. However, penalty charges do apply.

Interest. Interest is generally not charged on late tax prepayments so long

as the tax is paid by the due date for the quarterly return (see exception below). However, interest is charged on any tax payments for the quarter, including prepayments, if they are paid after the due date for the quarterly return. Interest is calculated from the date the quarterly return was due until the date it is paid. See page 2, "Late Tax Return Filings and Late Payments," for an example of how interest is calculated.

Exception: You will be charged interest for a late prepayment if the Board grants you relief from any of the prepayment penalties listed below. Interest is charged from the date on which the prepayment was due until the date of payment. See page 7 for information on how to request relief from penalties.

Penalties. A 6 or 10 percent penalty will apply.

Six Percent. If a prepayment is made after the prepayment due date but before the due date for the quarterly return, a 6 percent penalty applies. This amount can be increased to 10 percent if the Board determines that the prepayment was late as the result of negligence or intentional disregard of the Sales and Use Tax Law or Board regulations (for example, a continued failure to file prepayments or a continued underreporting of prepayments).

Ten Percent. A 10 percent penalty applies to taxes that are paid after the quarterly due date, including any tax prepayments made after the quarterly due date. If you have made prepayments for the reporting period and are late in your quarterly payment, the 10 percent penalty is based on your total tax liability minus any prepayments.

Penalty and interest charges apply if you do not file a tax return.

❖ Failure to File a Return

If it is determined that you should have filed a sales and use tax return but failed to do so, the Board will send a *Notice of Determination* indicating the amount you owe, including interest and penalty charges.

Interest. The interest charged for unpaid taxes is the same as that charged on taxes paid with returns that are filed late. See page 2, "Late Tax Returns," for an example of an interest calculation.

Penalties. The penalty for failure to file a return is 10 percent of the tax amount that is due for each determination. An additional 25 percent penalty applies if the failure to file was due to fraud or intent to evade the Sales and Use Tax Law or Board regulations.

❖ Failure To Pay by EFT (electronic funds transfer)

The information in this section applies to businesses that are registered to pay taxes through electronic funds transfers (EFT).

If you do not pay through EFT but use another means (you pay by check, for example), you will be subject to a 10 percent penalty on the taxes that were incorrectly remitted. You must make your tax payments by electronic funds transfer unless the Board advises you in writing that you are no longer required to do so.

Note—multiple penalties. If you are also subject to penalties for late filing and late payment, your penalty will not exceed 10 percent of the amount of tax due.

❖ Board Determinations

In some instances, an unpaid tax liability will be discovered by the Board during an examination of taxpayer records. The Board will determine the amount due and bill for the liability. Interest and penalty charges may also apply to those billings.

Nonpayment or Late Payment of a Determination

If the Board determines you owe tax, it will send you a bill, or *Notice of Determination*. The notice will indicate the amount you owe, including interest and penalty charges. The notice also explains your appeal rights.

If you do not pay the tax liability by the due date on the notice (30 days from the date the determination was issued), an additional 10 percent penalty will apply to the amount of overdue tax unless you file a timely appeal, as explained in the *Notice of Determination*.

If your appeal is unsuccessful, you will receive a *Notice of Redetermination*. If you do not pay the tax liability by the due date for the redetermination (30 days from the date the notice was issued), a 10 percent penalty will apply to that overdue payment.

Statutory interest continues to increase on any unpaid tax whether or not an appeal is filed.

Negligence or Fraud Penalties

If the Board finds that you did not report tax because of negligence or intentional disregard of the law, a 10 percent penalty will be added to the determination. If the Board finds that the tax was not reported due to fraud or the intent to evade the law, a 25 percent penalty

You will receive a bill, or *Notice of Determination*, if the Board determines additional tax is owed.

will be imposed (see page 6 for special application to vehicles, vessels, mobile homes, and aircraft).

❖ Improper Use of a Resale Certificate

As the holder of a seller's permit, you may issue a resale certificate to purchase property that you will resell prior to use. The seller from whom you purchase the property will not charge for sales tax reimbursement or use tax.

It is a misdemeanor to issue a resale certificate to evade payment of tax. For example, if you are no longer actively engaged in business or if you know at the time of purchase that the property will not be resold, you may not issue a resale certificate. Improper use of a resale certificate will result in interest and penalties.

Interest. If a person misuses a resale certificate, he or she will owe the tax that should have been paid, plus interest on that tax. Interest is calculated in the same manner as interest for taxes that are paid late. See page 2, "Late Tax Returns," for an example of an interest calculation.

Penalties. The penalty for the improper use of a resale certificate is \$500 for each transaction or 10 percent of the amount of tax due, whichever is higher. In cases of failure to file a tax return or of selling without a valid seller's permit, additional penalties may apply.

For more information, please call 1-800-400-7115 and request a copy of Regulation 1668, *Resale Certificates*. You can also download the regulation from our website, www.boe.ca.gov.

❖ Swap Meets, Flea Markets, and Special Events

Operators of swap meets, flea markets, and other special events must prepare special reports and meet other requirements related to those events. Operators who fail to comply with these requirements are subject to a penalty of \$1000 per offense. For more information, please contact your local Board office (see page 11).

❖ Selling Without a Valid Seller's Permit

You are required to obtain a seller's permit if you are engaged in business in California and intend to sell or lease tangible personal property that is ordinarily subject to sales tax when sold at retail (even if you make no retail sales). If you do not obtain a valid seller's permit prior to the date in which the first tax return is due, you are subject to penalty and interest charges.

Interest. The interest charged for unpaid taxes is the same as that charged for returns that are paid late. See page 2, "Late Tax Returns," for an example of an interest calculation.

Penalties. You will be charged a 10 percent penalty on the taxes due for failing to file a return by its due date.

You could also be charged an additional 50 percent penalty if it is determined that, in order to evade tax, you knowingly failed to obtain a valid seller's permit prior to the date on which the first tax return was due. The 50 percent penalty applies to the taxes that should have been paid during the period you were engaged in business in California without a valid permit. If your taxable sales during the period averaged \$1000 or less per month,

Improper use of a resale certificate will result in interest and penalty charges.

the 50 percent penalty does not apply. The 50 percent penalty also does not apply to sales of vehicles, vessels, or aircraft if the transaction is subject to a 50 percent penalty for registering outside of California to evade payment of tax (see below).

Note—Retail florists who sell without a valid California seller's permit are subject to an additional penalty of \$500.

❖ Motor Vehicles, Aircraft Mobile Homes, Vessels, and Commercial Coaches

You may owe use tax if you purchase a motor vehicle, aircraft, mobile home, or commercial coach from someone who is not a licensed dealer.

Special rules apply to documented vessels and aircraft that are purchased from someone who is not engaged in business as a seller of those items. For information on these types of purchases, please call the Board's Information Center, 1-800-400-7115.

In general, you must pay use tax if

- You purchase a motor vehicle, mobile home, undocumented vessel, or commercial coach from a person who is not licensed as a dealer by the Department of Motor Vehicles or the Department of Housing and Community Development (from a private party, for example), and
- The property will be used, stored, or otherwise consumed in California.

You must pay the use tax within the quarter in which the vehicle, aircraft, mobile home, vessel, or commercial coach becomes subject to the use tax. If you are unsure of the due date, you should contact the Board as soon as possible. Call 1-800-400-7115.

Vehicles, undocumented vessels, and commercial coaches (such as buses) used or stored in this state must be registered with the Department of Motor Vehicles.

Mobile homes must be registered with the Department of Housing and Community Development. Either department will collect the applicable use tax at the time of registration. (Registration is equivalent to filing a use tax return.)

If you are unsure whether you must register, you should contact the appropriate department.

Interest. You will owe interest for a late payment if you

- Pay less than the correct amount of tax (the incorrect amount of tax may have been paid, for example, because the purchase price was understated)
- File a return but do not pay the tax
- File a late return

Interest is due for each month or fraction of a month the tax payment is overdue. If you paid less than the correct amount of tax, the interest would apply only to the additional tax due. See page 2, "Late Tax Return Filings and Late Payments," for an example of an interest calculation.

Penalties. One or more of the following penalties may apply:

- 10 percent for late payment
- 10 percent for failing to register with DMV or the Department of Housing and Community Development
- 10 percent for negligence
- 10 percent for failure to pay the correct amount of tax (the 10 percent would apply only to the additional amount)
- 25 percent for fraud or evasion
- 50 percent for registering a vehicle, vessel, or aircraft outside of California to evade payment of tax

Relief from Interest or Penalties

It is possible to have interest or penalty charges (or both) waived under limited circumstances. If one of the situations described below applies to you, you should contact our Information Center for advice on how to claim the relief.

❖ Reliance on Erroneous Written Advice

You may be relieved of tax, penalty, and interest charges due on a transaction if the Board determines that you failed to pay tax because you reasonably relied on erroneous written advice from the Board regarding the transaction. For this relief to apply, the Board must have received a written request for advice on the transaction, the request must have identified the taxpayer to whom the advice applied, and the writer must have fully described the facts and circumstances of the transaction. The Board's written reply must have advised the writer of the taxability of the transaction and the conditions that had to be met.

If this situation applies to you, you should call 1-800-400-7115 for information on how to file a claim for relief from payment.

Note: Receiving erroneous verbal advice from a Board employee does not relieve you of tax, penalty, or interest charges.

❖ Late Payments as the Result of a Disaster

Interest and penalty charges can be waived for late tax returns and payments if they are submitted late because

of a disaster. *Disaster* means fire, flood, storm, tidal wave, earthquake, or a similar public calamity, whether or not it results from natural causes.

If you are unable to file a return or make a tax payment on time because of a disaster, you must file a statement with the Board, under penalty of perjury, stating the facts upon which you are basing your claim for relief. You can use form BOE-27, *Penalty and Interest Relief for Disaster Victims*, which is available from our website or Information Center.

Interest and penalty charges cannot be waived if it is determined that the return or payment was willfully filed late or was late as the result of negligence.

❖ Extensions of Time

The law allows the Board, for good cause, to extend the due date for filing a tax return or for paying tax that is due. The request for the extension must be filed prior to or within the period for which the extension may be granted, and the extension cannot exceed one month.

If you are granted an extension of time to *file your return* and file it by the extended due date, there is no penalty for filing late. If you are granted an extension of time to *pay your tax* and pay it by the extended due date, there is no penalty for a late payment; however, you must pay interest during the extension period. Interest may be waived in cases of public disaster. See previous section.

Interest is charged for each month or fraction of a month that the return is submitted after the due date for the reporting period. See page 2, "Late Tax Return Filings and Late Payments," for an example of how interest is calculated.

Interest and penalty charges can be waived for late tax return payments if they are submitted late because of a disaster.

To request additional time to file, call 1-800-400-7115 and request a copy of form BOE-468, *Request for an Extension of Time*. You can also visit our website to download the form, www.boe.ca.gov.

❖ Circumstances Beyond Your Control

You may apply for relief from penalty charges if, because of circumstances beyond your control, you

- Are unable to file your return or make a tax payment on time
- Are unable to make a payment by electronic funds transfer (applies to taxpayers who are required to pay by EFT)

Interest charges, however, cannot be waived (except in cases of disaster, as described on page 7).

If you wish to file for relief from penalty based on circumstances beyond your control, you must file a statement with the Board, stating, under penalty of perjury, the facts that apply. To request relief, you may use form BOE-735, *Request for Relief from Penalty*. Call 1-800-400-7115 to request a copy.

If your payment or return filing was late because of failure to exercise ordinary care or because of willful neglect, you will not be granted relief from the penalty.

❖ Late Penalty Imposed in Error

If you mailed your payment or return on time but the Board shows it was late, you may file a *Declaration of Timely Mailing* (BOE-135-A), stating under penalty of perjury that the payment in question was mailed on time, was properly addressed, and included sufficient post-

age. If the Board concludes that you did mail your payment or return on time, it will correct its records to show that no late penalty or interest is due.

Corroborative evidence obtained by examination of your records or bank account may be required in some instances. If this situation applies to you, you should call our Information Center for advice on how to file a declaration.

❖ Errors or Delays Caused by the Board of Equalization or the Department of Motor Vehicles

For tax liabilities arising on or after July 1, 1999, interest may be waived if you did not pay your tax liability due to

- An unreasonable error or delay by a Board employee acting in an official capacity, or
- An error made by the Department of Motor Vehicles (DMV) in calculating the use tax due on a vehicle or vessel registered with the DMV

If you believe you are entitled to relief from interest charges for either of the reasons described above, you must file a statement with the Board, under penalty of perjury, stating the facts that apply. The Board will not grant a waiver of interest charges if it concludes a significant part of the error or delay was caused by your own actions.

❖ Multiple Penalties

If you have been assessed multiple penalties for a tax liability — but were charged only 10 percent because of the limitations discussed on pages 2 and 4 — your request for relief must explain

You may be relieved of penalty charges if you are unable to file or pay on time to due to circumstances beyond your control.

the reason for delay for *each* penalty. That is, you must be granted relief for each penalty to avoid all penalty charges.

Interest Paid on Refunds and Credits

The Board can pay interest on tax overpayments that are refunded to a taxpayer or credited to his or her account.

If the Board determines that a tax, penalty, or interest payment was erroneously or illegally collected or computed and exceeds the amount required by law, it will first credit the amount of the overpayment against any other tax liabilities that may be owed to the state. If an excess amount remains, that amount will be refunded (or credited) to the person who had made the overpayment.

Interest, however, is not applied to overpayments if the Board determines that the overpayment was the result of carelessness or intentionally made. Also, if you request that the Board defer action on your claim for refund and we agree to do so, we can require that you waive interest for the period of time the refund is deferred.

Interest Charged on Refunds Issued in Error

If the Board issues a refund in error, it may recover the refunded amount. A *Notice of Determination* to recover the excess refund will be mailed to you.

Note—Beginning July 1, 1999, if the Board finds that the erroneous refund was not caused by the person or any related party liable for payment of the tax, no interest will be charged until 30 days after the Board mails a *Notice of Determination*. (The mere filing of a claim for refund is not considered a cause of the erroneous refund for these purposes.)

How Interest Is Calculated

The current interest rate applied to *overdue and unpaid taxes* is 11 percent per year, and the interest rate applied to *refunds and credits* for tax overpayments is 5 percent per year. These rates will remain in effect through June 30, 2000, or later, as explained below.

The interest rate applied to refunds of overpaid taxes is based on the value of 13-week treasury bills. The interest rate applied to unpaid or underpaid taxes is based on the rate charged by the Internal Revenue Service plus 3 percent.

By law, the rates must be evaluated by the Board every January and July. If it is determined that a rate change is required, the change takes effect 6 months later and remains in effect for at least 6 months. For the most current rate information, you can call the Board's Information Center. See page 10.

When calculating interest, the Board uses a "modified adjusted rate per month." That is, the annual rate is adjusted to its monthly equivalent. For example, an 11 percent annual rate translates to an adjusted monthly rate of .00917. The adjusted rate is used for each month or fraction of a month that a tax payment is overdue.

Interest accumulates from the day after the date on which the amount of tax first became due, except in cases of failure to file a return and of Board-determined deficiencies. In those cases, interest accumulates from the day after the last day of the month following the quarterly period for which the amount of tax should have been paid. Interest on refunds and credits accumulates from the first day of the month following the due date of the reporting period in which the overpayment was made.

Interest rates are evaluated every January and July to determine whether a change is required.

For More Information

❖ **Information Center**

If you have a general tax question or would like to order a publication, call our Information Center and talk to a customer service representative. Representatives are available from 8:00 A.M. to 5:00 P.M., Pacific time, Monday-Friday, excluding holidays. Call:

1-800-400-7115

We want to make
working with us
as easy as
possible.

Telephone Devices for the Deaf

TDD phones: Voice phones:
1-800-735-2929 1-800-735-2922

If you call after working hours to request information, you can leave a recorded message.

For questions regarding your account, you may call the district office that handles your account. District office telephone numbers are listed on page 11.

Fax-Back Service. You can call at any time to obtain fax copies of selected forms and notices. Call 1-800-400-7115 and choose the fax option.

Appeals

If you have appealed a tax billing, you can call the Information Center to check on the status of your appeal. You can also check on the balance due, including the amount of interest that has accumulated to date.

❖ **Internet Site**

Many publications can be downloaded from our web site. Or you can download and mail in an order form for printed copies of Board publications, regulations, manuals, and law guides. Our address is www.boe.ca.gov.

❖ **Special Taxes**

If you have questions regarding interest and penalty charges for taxes administered by the Board other than sales and use taxes, please call 1-800-400-7115 or call one of the following numbers:

Environmental Fees

916-322-9534

Excise Taxes

916-327-4208

Fuel Taxes

916-322-9669

❖ **Taxpayers' Rights Advocate**

If you have a disagreement you are unable to resolve through routine channels, you are encouraged to contact the Taxpayers' Rights Advocate Office for help. Contact them at:

Taxpayers' Rights Advocate, MIC:70
State Board of Equalization
PO Box 942879
Sacramento CA 94279-0070

Telephone

916-324-2798 or 1-888-324-2798

FAX

916-323-3319

District Offices

If you have questions regarding your account, call the district office that handles your account. Please have your seller's permit number available when you call.

For general tax questions, or to order a publication, call our Information Center toll free at 1-800-400-7115. Or visit our website at www.boe.ca.gov.

City	Area Code	Number	City	Area Code	Number
Bakersfield	661	395-2880	San Marcos	760	510-5850
City of Industry	562	908-5280	Santa Ana	714	558-4059
Culver City	310	342-1000	Santa Rosa	707	576-2100
El Centro	760	352-3431	Stockton	209	948-7720
Eureka	707	445-6500	Suisun City	707	428-2041
Fresno	559	248-4219	Torrance	310	516-4300
Laguna Hills	949	461-5711	Van Nuys	818	904-2300
Norwalk	562	466-1694	Ventura	805	677-2700
Oakland	510	622-4100			
Rancho Mirage	760	346-8096			
Redding	530	224-4729			
Riverside	909	680-6400			
Sacramento	916	227-6700			
Salinas	831	443-3003			
San Diego	619	525-4526			
San Francisco	415	703-5400			
San Jose	408	277-1231			

Remember to have your seller's permit number available when you call.

Offices for Out-of-State Accounts

City	Area Code	Number
Chicago, IL	312	201-5300
Houston, TX	281	531-3450
New York, NY	212	697-4680
Sacramento, CA	916	227-6600

NOTE: The statements in this pamphlet are general and are current as of the date on the cover. The Sales and Use Tax Law (Revenue and Taxation Code, Section 6001 and following) is complex and subject to change. If there is a conflict between the law and this booklet, any decisions will be based on the law and not this booklet.

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